

## **REMARKS**

### **I. Introduction**

Claims 26 to 52 are pending in the present application. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

### **II. Rejection of Claims 26, 28 to 30, and 40 to 43 Under 35 U.S.C. § 102(e)**

Claims 26, 28 to 30, and 40 to 43 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,888,492 ("Voles"). It is respectfully submitted that Voles does not anticipate the present claims for at least the following reasons.

To anticipate a claim, each and every element as set forth in the claim must be found in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of Calif., 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). That is, the prior art must describe the elements arranged as required by the claims. In re Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). In other words, to be anticipatory, a single prior art reference must show all of the limitations of the claims arranged or combined in the same way as recited in the claims. Net Moneyin, Inc. v. Verisign, Inc., 2008 WL 4614511 (Fed. Cir. 2008).

Claim 26 relates to a measuring device for at least one of (a) measuring a distance between the measuring device and at least one object and (b) measuring a speed difference between the measuring device and the at least one object, including an emission device adapted to send a transmission signal that includes at least two signal portion sequences, each of a first signal portion sequence and a second signal portion sequence including at least two temporally alternating signal portions, at least two signal portions of a signal portion sequence differing in frequency by one differential frequency, in which the differential frequency of the first signal portion sequence differing from the differential frequency of the second signal portion sequence.

Voles does not identically disclose, or even suggest, all of the claimed features of claim 26. Instead, Voles merely indicates that a radar frequency is swept

in a stepwise manner. Abstract; and col. 2, lines 14 to 20. In particular, Figure 1 shows a stepwise frequency graph having a single increment  $\delta F$ . Therefore, Voles does not identically disclose, or even suggest, the feature of a differential frequency of a first signal portion sequence differing from a differential frequency of a second signal portion sequence.

Accordingly, Voles does not identically disclose, or even suggest, all of the features included in claim 26. As such, it is respectfully submitted that Voles does not anticipate claim 26.

As for claims 28 to 30, which ultimately depend from claim 26 and therefore include all of the features included in claim 26, it is respectfully submitted that Voles does not anticipate these dependent claims for at least the same reasons more fully set forth above.

Claim 40 includes features analogous to those of claim 26. Accordingly, Voles does not anticipate claim 40 for at least the same reasons set forth above.

As for claims 41 to 43, which ultimately depend from claim 40 and therefore include all of the features included in claim 40, it is respectfully submitted that Voles does not anticipate these dependent claims for at least the same reasons more fully set forth above.

In view of all the foregoing, withdrawal of this rejection is respectfully requested.

### **III. Rejection of Claims 27, 31 to 39, and 44 to 52 Under 35 U.S.C. § 103(a)**

Claims 27, 31 to 39, and 44 to 52 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Voles and PCT International Published Patent Application No. WO 02/31529 ("Mende et al."). It is respectfully submitted that the combination of Voles and Mende et al. does not render unpatentable the presently pending claims for at least the following reasons.

Claims 27, and 31 to 39 ultimately depend from claim 26, and claims 44 to 52 ultimately depend from claim 40. As more fully set forth above, Voles does not disclose, or even suggest, all of the features included in claims 26 and 40. Mende et al. does not cure the deficiencies of Voles. Accordingly, it is respectfully submitted that the combination of Voles and Mende et al. does not render unpatentable dependent claims 27, 31 to 39, and 44 to 52.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

**IV. Conclusion**

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

Date: February 20, 2009

By: /Clifford A. Ulrich/  
Clifford A. Ulrich  
Reg. No. 42,194

KENYON & KENYON LLP  
One Broadway  
New York, New York 10004  
(212) 425-7200  
**CUSTOMER NO. 26646**